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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEPHANIE KIPPERMAN, et al.,)	No. C-75-1211-CBR
)	
Plaintiff,)	SUPPLEMENTAL BRIEF IN SUPPORT
)	OF MOTION TO DISMISS THIRD
vs.)	AMENDED COMPLAINT OR FOR
)	SUMMARY JUDGMENT
JOHN McCONE, et al.,)	
)	
Defendants.)	

In its memorandum of opinion filed April 28, 1976, the Court observed that there was no genuine issue of material fact concerning whether plaintiff's mail to the Soviet Union was covered or opened during the period 1953 to 1973 [Memorandum Opinion, p. 12], and cited United States v. Scrap, 412 U.S. 669, 688, 689 (1973) which held that "Pleadings must be something more than an ingenious academic exercise in the conceivable." [Memorandum Opinion, p. 13.]

Despite the most recent disclosures of the government, plaintiff's complaint remains "an ingenious academic exercise in the conceivable." The government's "Report to the Court" filed June 7, 1976, offers little solace to the plaintiff since it confirms a most critical aspect of this litigation, namely that

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OGC Has Reviewed

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1 plaintiff STEPHANIE KIPPERMAN still does not have information
2 upon which she could found a bona fide belief that her mail was
3 opened. Although it is possible, according to the government's
4 report, that her mail was photographed, there is no record that
5 this occurred, unless, of course, the government is withholding
6 the facts, an implausible assumption in view of other disclosures
7 made by the government with respect to the mail cover program.

8 The astounding fact is that plaintiffs have come this far
9 with a complaint that had no basis in fact, vis-a-vis STEPHANIE
10 KIPPERMAN, and on the heels of an inquiry under the Freedom of
11 Information Act from which the plaintiff, after receiving a
12 negative answer, declined to pursue remedies that would have
13 allowed her the discovery that she seeks in the instant action.

14 This Court observed in its Memorandum of Opinion that the
15 resources of our legal system are limited and that, "Plaintiff
16 brought this lawsuit essentially because she was dissatisfied with
17 the Central Intelligence Agency's response to her request for
18 information from the Agency's files." [Memorandum Opinion, p. 14.]

19 The Court neglected to mention that plaintiff's remedy in the
20 event she was "dissatisfied" was to prosecute an appeal under the
21 Act, not to file a spurious action, involving multiple defendants,
22 each of whom would have to go to the expense of employing his own
23 counsel or rely upon the government to pay that expense. As a
24 result, some eighteen separate law firms in addition to the Central
25 Intelligence Agency and the Department of Justice are represented
26 in this proceedings, and the entire bill is paid by the taxpayers.

27 It does not seem amiss to us under those circumstances for
28 this Court to say to the plaintiff, "If you do not have solid
29 information upon which to formulate a good faith belief that your
30 mail was opened and/or covered by these defendants, then you
31 should not be suing them, particularly when the Congress has
32 provided the mechanism for you to pursue what you apparently

1 believe is withheld or suppressed by the government without the
2 filing of this action."

3 While the government's late discovery is disappointing, it
4 is hardly shocking. One does not have to embrace the otherwise
5 shocking policies of the government to suggest that what is
6 being presented here in its "Report to the Court" merely confirms
7 what we already know, namely, that the government engaged in
8 illegal activity, but that none of it was directed at STEPHANIE
9 KIPPERMAN. One would expect her to be pleased that she was not
10 a target of governmental intrusion. Instead, she seems dis-
11 appointed, not because she is unable to vindicate a principle,
12 but because she does not have the facts upon which to launch her
13 action for damages in a situation in which there is absolutely
14 no evidence of damage. If indeed STEPHANIE KIPPERMAN is concerned
15 about the principle, this will be vindicated in other actions
16 involving mail covers that have been filed in other federal courts

17 As the Court noted in its Memorandum of Opinion, page 15,
18 plaintiff could have pursued her administrative remedies by appeal-
19 ing to the C.I.A.'s Information Review Committee and by doing so
20 "substantial savings in time and expense might have been realized."
21 While it is perhaps too late to unring the bell, it is not too late
22 to call a halt to a lawsuit that is insupportable in fact or in
23 law, particularly in a situation wherein another federal statute
24 provides a device for further discovery should plaintiff believe
25 that she can uncover facts that would support a complaint against
26 the defendants herein.

27 For the reasons set forth above, the Dismissal entered by
28 the Court should not be set aside.

29 Respectfully submitted,

30 TUCKMAN, GOLDSTEIN & PHILLIPS

31 By _____
32 ALVIN H. GOLDSTEIN, JR.

I declare that: I am ~~(XXXXXX)~~ employed in) the county of San Francisco, California.
(COUNTY WHERE MAILING OCCURRED)

I am over the age of eighteen years and not a party to the within entitled cause; my (business/~~XXXXXX~~ residence) address is:
555 California Street, Suite 3180, San Francisco, CA 94104

On June 24, 1976, I served the attached SUPPLEMENTAL BRIEF IN SUPPORT
AMENDED COMPLAINT OR FOR
SUMMARY JUDGMENT on the Parties

in said cause, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the
United States mail at San Francisco, California addressed as follows:

SEE EXHIBIT "A" ATTACHED HERETO

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on
June 24, 1976, at San Francisco, California.
(DATE) (PLACE)

Lisbeth L. Hirschboeck
(TYPE OR PRINT NAME)

Lisbeth L. Hirschboeck
SIGNATURE

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EXHIBIT A

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